

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 400 of 1997

with

COMPANY PETITIONS Nos.401 to 404 OF 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
 2. To be referred to the Reporter or not? No
 3. Whether Their Lordships wish to see the fair copy of the judgement? No
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
 5. Whether it is to be circulated to the Civil Judge? No

FI-MICRONS & MINERALS PRIVATE-LIMITED

Versus

.

Appearance:

MRS SWATI SOPARKAR for Petitioner

MR BHARAT T RAO for Respondent No. 1

CORAM : MR.JUSTICE H.L.GOKHALE

Date of decision: 16/03/98

ORAL JUDGEMENT

These are the petitions filed by five companies viz. Hitech Minerals Pvt. Ltd., Aric Industrial Products Pvt. Ltd., United Microns Pvt. Ltd., Fi-Microns & Minerals Pvt. Ltd. (all Transferor Companies) and 20 Microns Ltd. (the Transferee

Company) for sanction of a scheme of amalgamation of the Transferor Companies with the Transferee Company under Section 391 read with Section 394 of the Companies Act, 1956.

2. All the Petitioner Companies are engaged at present in manufacturing micronised minerals with different speciality products. All these companies belong to the same management group. The petitions give details of the advantages that would flow by virtue of the amalgamation of these companies.

3. All the shareholders of all the companies had given their consents in writing for the sanction of the scheme of amalgamation. All the unsecured creditors of the company also had given their consents in writing for the sanction of the scheme of amalgamation. Hence, the meetings of the shareholders and unsecured creditors were dispensed with by this High Court vide Order dated 10.12.1997 passed in the respective company applications. The Transferor Companies had undertaken to submit the written consents of all the secured creditors before this court before the final sanction of the scheme. All the Transferor Companies have put on record the consent letters from all the secured creditors in the respective petitions vide additional affidavits dated 20.1.1998 and 15.3.1998.

4. After the petitions were admitted they were advertised in the newspapers and no one has come forward opposing sanction of the scheme of amalgamation.

5. Notice of the petitions has been served upon the Central Government and Shri B.T.Rao, Additional Central Government Standing Counsel appearing for the Central Government. By his letter dated 11.2.1998, the Regional Director has drawn the court's attention to the absence of the consent letters of secured creditors with the applications. However, in view of the fact that the said consents are placed on the record of this court with affidavit dated 20.1.1998, this objection does not survive. The other observation reads as under:

"The valuation Report given by M/s. N.C.Vaishnav & Company, Chartered Accountants, indicates that in consideration of the transfer of the Assets and Liabilities of M/s. United Microns Pvt. Ltd., 210 fully paid up equity shares of Rs.10/- each, at a premium of Rs.10/- for every 100 fully paid up equity shares of Rs.10/- each of the Transferor Company has to be issued. However, in

the Scheme of Amalgamation as well as the petitions filed by the companies, the aforesaid figure of 210 has been wrongly stated as 2100."

6. In this connection it is clarified that the figure of "2100" as found in the scheme of amalgamation as also petition is correct. In fact there was a mistake in the report of the Chartered Accountants in stating the figure of "210" instead of "2100" and the said mistake arose because by mistake the denomination of the shares of the Transferor Company was stated to be Rs.10/- per share instead of correct figure of Rs.100/- per share. This aspect is clarified vide letter dated 6.2.1998 of the said Chartered Accountants which is placed on record by the learned Advocate for the petitioner. In view of this, objection also does not survive.

7. Notice of the petition of the Transferor Companies has also been served upon the Official Liquidator as required under Second Proviso to Section 394 (1) of the Act and the Official Liquidator has filed his Report dated 5.3.1998 stating that the affairs of the Transferor Companies have not been conducted in a manner prejudicial to its members or to public interest.

8. I have heard Mrs.Swati Soparkar, learned advocate for the petitioner companies. Having gone through the petition, I am satisfied that amalgamation would be in the interest of the company and its members. Under the circumstances, the Scheme of Amalgamation (Annexure-C to the petitions) is sanctioned. Prayer in terms of Para 15 (A) of the petitions is granted.

9. Petitions are disposed of accordingly. So far as costs to be paid to the Central Government Standing Counsel is concerned, I quantify the same at Rs.2,500/- per petition to be paid to Mr. B.T.Rao.

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[KMG Thilake]